

STATE OF MICHIGAN
DEPARTMENT OF LICENSING AND REGULATORY AFFAIRS
OFFICE OF FINANCIAL AND INSURANCE REGULATION
Before the Commissioner of Financial and Insurance Regulation

In the matter of

XXXXXX

Petitioner

v

File No. 121724-001

Blue Care Network of Michigan
Respondent

Issued and entered
this 8th day of November 2011
by R. Kevin Clinton
Commissioner

ORDER

I. BACKGROUND

On June 3, 2011, XXXXX, authorized representative of XXXXX (Petitioner), filed a request with the Commissioner of Financial and Insurance Regulation for an external review under the Patient's Right to Independent Review Act, MCL 550.1901 *et seq.*

The Commissioner immediately notified Blue Care Network of Michigan (BCN) of the request and asked for the information it used to make its final adverse determination. On June 9, 2011, the Commissioner received BCN's response. After a preliminary review of the information submitted by both parties, the Commissioner accepted the request on June 13, 2011. BCN provided additional information on June 14, 2011.

Because the case presented a medical question, the Commissioner assigned the matter to an independent review organization which submitted its recommendation on June 29, 2011.

II. FACTUAL BACKGROUND

The Petitioner is a member of BCN. Her health care benefits are defined in the BCN 5 Certificate of Coverage (the certificate).

The Petitioner sought retro-authorization and reimbursement from BCN for medical services received at a hospital in XXXXX, Egypt, from December 12 through December 24, 2009, including a kidney transplant on December 14, 2009. The providers were not part of BCN's network.

BCN declined to cover the services from an out-of-network provider. The Petitioner appealed the denial through BCN's internal grievance process and received its final adverse determination of April 8, 2011.

III. ISSUE

Did BCN correctly deny coverage for the Petitioner's kidney transplant and related medical services?

IV. ANALYSIS

Respondent's Argument

In its final adverse determination of April 8, 2011, BCN explained its denial:

. . . The [*grievance*] Panel maintained the denial; out of network services are benefit exclusions. In addition, it was determined that the rendered services were elective; therefore, not covered and not eligible for reimbursement.

BCN cites three provisions in the certificate to support its decision. The first provision states that organ transplants, to be covered, must be performed in a BCN-approved facility:

1.17 Organ and Tissue Transplants

Organ or body tissue transplant is covered in full when:

- It is considered non-experimental in accordance with generally accepted medical practice, and
- It is medically necessary, and
- It is performed at a BCN-approved facility.

* * *

For a preauthorized transplant, BCN also covers the necessary hospital, surgical, lab and X-ray services for a non-member donor, unless the non-member donor has coverage for such services.

The other two provisions explain that emergency care is an exception to the general requirement that services must be received from network providers:

1.26 Out-of-Area Coverage

You are covered when traveling outside of the BCN service area for emergency services that meet the conditions described in Section 1.05.

* * *

2.01 Unauthorized and Out-of-Plan Services

Except for emergency care as specified in Section 1.05, health, medical and hospital services listed in this Certificate are covered only if they are:

- Provided by a BCN-affiliated provider.
- Preauthorized by BCN.

Section 1.05 of the certificate contains the following the following language regarding emergency care:

1:05 Emergency Care

Definitions:

Medical emergency — The sudden onset of a medical condition that manifests itself by signs and symptoms of sufficient severity, including severe pain, such that the absence of immediate medical attention could reasonably be expected to result in serious jeopardy to your health or to your pregnancy, in the case of a pregnant woman, serious impairment to bodily functions, or serious dysfunction of any bodily organ or part.

* * *

Emergency services — Services to treat emergency conditions as described above.

Stabilization — The point at which no material deterioration of a condition is likely, within reasonable probability, to result from or occur during your transfer.

Coverage:

Emergency services are covered up to the point of stabilization when they are medically necessary and needed immediately to treat a condition that meets the definition of an emergency condition as described above or if the Primary Care Physician directs the patient to go to an emergency care facility.

It is BCN's position that the kidney transplant was an elective procedure, not emergency care, and therefore it is not covered when performed by an out-of-network provider without prior authorization, which the Petitioner did not have. In a letter dated November 11, 2010, BCN advised the Petitioner's husband the following:

. . . confirmed that [the Petitioner] contacted our Customer Contact Center on March 13, 2009 to inquire about having a kidney transplant in Egypt. She was informed at that time that she should not travel outside of the Blue Care Network (BCN) services area, including out of the country, for the purposes of seeking service. She was informed that her transplant would need to be performed in Michigan, and was instructed to coordinate with her primary care physician in order to get assistance with seeking out a donor as well as having the procedure.

In a January 28, 2010, letter to the Petitioner, BCN stated it could not authorize the transplant in Egypt as an emergency:

. . . Out-of-network services such as the one requested may be approved, only in an emergency or when an in-network provider cannot offer the service. Organ transplants are generally not an emergency procedure, as they need planning, testing and availability of an organ. An in-network health care professional or facility can provide the service requested.

BCN does not dispute the medical necessity of the kidney transplant. It bases its denial on the terms and conditions of the certificate for out-of-network services.

Petitioner's Argument

The Petitioner states that the kidney transplant was done on an emergency basis and was necessary to save her life. XXXXX, DO, her physician in Michigan, wrote on December 21, 2009:

[The Petitioner] is a patient of mine who recently had emergent Renal Transplantation done outside the United States. I have reviewed her case and due to her circumstances this was determined to be an emergent procedure which her insurance is to cover.

The Petitioner's husband indicated she had been residing in Egypt for an extended period of time in 2009 and it was not practical for her to return to the United States for the transplant. He states she would have died without the procedure.

Commissioner's Review

The certificate covers emergency care from an out-of-network provider when it is medically necessary. The question of whether the Petitioner's kidney transplant was done on an emergency basis was presented to an independent review organization (IRO) for analysis as required by Section 11(6) of the Patient's Right to Independent Review Act, MCL 550.1911(6). The IRO reviewer is board certified in nephrology and has been in active practice for more than 15 years. The IRO reviewer's report contained the following analysis:

The MAXIMUS independent physician consultant, who is familiar with the medical management of patients with the member's condition, has examined the medical record and the arguments presented by the parties.

The results of the MAXIMUS physician consultant's review indicate that this case involves an adult female who has a history of kidney disease. The member underwent a kidney transplant and received related services in XXXXX, Egypt. At issue in this appeal is whether it was medically necessary for the member to have undergone a kidney transplant and received related services from out-of-network providers.

The MAXIMUS physician consultant indicated the member was out of the country and apparently had some worsening of her chronic kidney disease. The MAXIMUS physician consultant also indicated that the member may have required some emergent stabilization of her condition, including dialysis. The MAXIMUS physician consultant explained that although preemptive kidney transplant, in which a patient receives a kidney transplant prior to starting dialysis, is desirable, kidney transplantation is not considered an emergent therapy because dialysis is routinely available to stabilize the patient until surgery can be planned. The MAXIMUS physician consultant also explained that the member could have been stabilized with dialysis to allow travel to the United States to be evaluated for kidney transplantation. The MAXIMUS physician consultant noted that if the member were not stable enough for travel due to complications of her kidney disease, she would not have been stable enough for kidney transplant. The MAXIMUS physician consultant indicated that kidney transplantation is considered an elective and not emergent procedure for patients with uremia. [Citations omitted]

Pursuant to the information set forth above and available documentation, the MAXIMUS physician consultant determined that it was not medically necessary for the member to have undergone a kidney transplant and received related services from out-of-network providers.

The Commissioner is not required in all instances to accept the IRO's recommendation. However, the IRO recommendation is afforded deference by the Commissioner. In a decision to uphold or reverse an adverse determination, the Commissioner must cite "the principal reason or reasons why the Commissioner did not follow the assigned independent review organization's recommendation." MCL 550.1911(16)(b). The IRO's analysis is based on extensive experience, expertise and professional judgment. The Commissioner can discern no reason why the IRO's recommendation should be rejected in the present case.

The Commissioner finds that BCN's denial of retro-authorization and coverage for Petitioner's kidney transplant and related medical services was correct under the terms and conditions of the certificate.

V. ORDER

The Commissioner upholds Blue Care Network of Michigan's final adverse determination of April 8, 2011. BCN is not required to cover the Petitioner's kidney transplant and related medical services received from non-network providers in Egypt.

This is a final decision of an administrative agency. Under MCL 550.1915, any person aggrieved by this Order may seek judicial review no later than 60 days from the date of this Order in the circuit court for the county where the covered person resides or in the circuit court of Ingham County. A copy of the petition for judicial review should be sent to the Commissioner of Financial and Insurance Regulation, Health Plans Division, Post Office Box 30220, Lansing, MI 48909-7720.

R. Kevin Clinton
Commissioner